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The flexibility of res judicata in social security law

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SUMMARY

Res judicata represents one of the pillars of civil procedure, conferring stability on judicial decisions. However, when compared with the protective and social nature of social security law, it opens up room for reflection on its flexibility. This article aims to analyze the relativization of res judicata in the social security context, in light of doctrine, case law, and applicable legal provisions, especially in light of the production of new evidence and the application of Superior Court of Justice Theme 629. It concludes that the rigidity of res judicata must give way to the need to ensure the fundamental rights of insured parties, provided that the established legal and evidentiary parameters are respected.

Keywords: Res Judicata. Social Security Law. New Evidence. Topic 629 of the Superior Court of Justice. Flexibility.

ABSTRACT

Res judicata represents one of the pillars of civil procedure, conferring stability to judicial decisions. However, when compared with the protective and social nature of social security law, it opens up room for reflection on its flexibility. This article aims to analyze the relativization of res judicata in the social security field, in light of doctrine, case law, and applicable legal provisions, especially in light of the production of new evidence and the application of Superior Court of Justice (STJ) Topic 629. It concludes that the rigidity of res judicata must give way to the need to ensure the fundamental rights of insured parties, provided that the established legal and evidentiary parameters are respected.

Keywords: Res Judicata. Social Security Law. New Evidence. Superior Court of Justice (STJ) Topic 629. Flexibility.

1. INTRODUCTION

Res judicata, enshrined in Article 502 of the Code of Civil Procedure (CPC), is defined as "a decision on the merits no longer subject to appeal." This principle guarantees the immutability of final judicial decisions, promoting legal certainty, predictability, and stability in legal relationships. However, when transposed to the scope of Social Security Law, this rigidity encounters significant limits, particularly due to the **constitutional, protective, and alimony** nature of the rights in question.

As Leite and Santos (2021) highlight, *"Indeed, given the particularities of social security demands, Civil procedural legislation is insufficient and inadequate, which should guide the legislator to develop legal norms that aim to find adequate solutions to issues such as the form of occurrence of the thing*

judged in this area, since social security law deals with constitutional benefits that are essential for the survival of insured persons." In this sense, a judgment on the merits without sufficient evidence cannot generate a definitive preclusion of the substantive right, since this would imply a violation of access to justice and the principle of human dignity (art. 1, III, of the Federal Constitution).

The case law of the Superior Court of Justice and the Federal Regional Courts has evolved to allow for the **relativization of res judicata,** especially in cases where **new, relevant,** previously unavailable evidence is presented. This article examines this phenomenon in light of doctrine, case law, and applicable law, particularly based on **Superior Court of Justice Theme 629** and the theory of **res judicata *secundum eventum probationis.***

2. ASSUMPTIONS AND FLEXIBILIZATION OF RES JUDICATA IN THE CPC

Before delving into the core of the flexibilization of res judicata in social security matters, it is essential to understand the normative assumptions governing the existence of res judicata in civil proceedings. To this end, we highlight the provisions contained in articles 485 and 487 of the 2015 Code of Civil Procedure, which define, respectively, the cases in which a case is dismissed without a ruling on the merits and the situations in which a final judgment is reached.

Under **Article 485 of the Code of Civil Procedure (CPC),** the judge will dismiss the case without addressing its merits when identifying, for example, the absence of prerequisites for the establishment and valid and regular development of the case (item IV), as well as the occurrence of res judicata (item V), lack of legitimacy or procedural interest (item VI), among other procedural hypotheses. In these cases, the judicial ruling does not generate **substantive res judicata,** only **formal res judicata,** and the reinstatement of the lawsuit is fully viable, provided that the procedural defects that led to the dismissal are remedied.

On the other hand, **Article 487 of the CPC** addresses the hypotheses for resolution of the merits, which include: acceptance or rejection of the claim (item I); recognition of forfeiture or prescription (item II); and approval of recognition of the claim, settlement, or waiver (item III). Only a judgment that falls within one of these hypotheses is capable of producing the effects of **material res judicata,** rendering immutable and indisputable the judicial decision that effectively addressed the subject matter of the dispute.

In the words of **Daniel Amorim Assumpção Neves (2017, p. 878),** material res judicata is the quality conferred on a judicial decision that, once final, becomes incapable of further discussion, even in another process:

> After the final judgment or ruling on the merits becomes final, the effects projected in the practical plan by this decision can no longer be

> discussed in another lawsuit, or even by the legislator, which would be sufficient to conclude that such effects cannot be modified, being protected by the “mantle” of material res judicata. The intangibility of the legal situations created or declared, therefore, would be the main characteristic of material res judicata (NEVES, 2017, p. 878).

It is therefore important to clearly distinguish between the concepts of formal and substantive **res judicata .** The former limits its effects to the proceedings in which it was issued, not preventing the merits from being analyzed in a new lawsuit; the latter prevents reexamination of the matter once definitively decided, conferring legal certainty on the judicial decision.

Despite this rigidity, the Code of Civil Procedure itself **exceptionally** allows for the overturning of res judicata through a **rescissory action** (Articles 966 to 975 of the Code of Civil Procedure). Among the grounds provided for this, **Section VI of Article 966 deserves special mention,** authorizing the rescission of a judgment when "it is based on evidence whose falsity has been established in criminal proceedings or is demonstrated in the rescissory action itself" or, further, when **new evidence is discovered,** existing at the time of the decision but **not accessible to the party for reasons beyond their control,** and which would be sufficient, in itself, to modify the outcome of the judgment **(Section VII).**

However, in the context of social security lawsuits, the use of rescission proceedings **is not always appropriate or sufficient.** The two-year statute of limitations, combined with the insufficiency of most Social Security beneficiaries and the difficulty in obtaining technical documents such as the **Professional Social Security Profile (PPP), environmental work reports ,** or **rural registrations,** poses nearly insurmountable barriers for interested parties.

For this reason, contemporary doctrine and higher jurisprudence have recognized the the possibility of **filing a new lawsuit,** provided it is supported by **additional evidence** capable of establishing a situation distinct from that faced in the previous lawsuit. This involves **relativizing material res judicata,** based on the idea that the absence of effective evidentiary content in the original lawsuit does not necessarily lead to a definitive ruling on the substantive right claimed.

At this point, the construction of the so-called **res judicata *secundum eventum probationis*** gains relevance , as we will see in the next topic.

3. THE THING *SECONDUM EVENTUM PROBATIONIS*

The theory of **res judicata *secundum eventum probationis*** holds that material res judicata is only formed when there is an effective assessment of the merits based on sufficient evidence. Otherwise, when the dismissal is due to **the absence or insufficiency of**

evidence, there is no formation of material res judicata, allowing new action with robust evidentiary instruction.

Rejection due to insufficient evidence does not reveal the existence or non-existence of the substantive right, which is why it should not prevent a new judicial assessment.

The Judiciary's role cannot end with a formal decision that ignores factual reality and the new elements that reveal it. Thus, it is not a matter of nullifying the res judicata, but of **recognizing that it has not been** fully materially perfected.

This theory gains special relevance in the field of Social Security Law, where it is common for requests to be rejected due to the absence of documents such as PPPs, technical reports or formal proof of rural ties, which often only become available after the first court decision.

4. STJ TOPIC 629 AND ITS APPLICABILITY

STJ Theme 629 consolidated the understanding that:

> "The absence of effective evidentiary content to instruct the initial claim, as determined by art. 283 of the CPC, implies the lack of a prerequisite for the constitution and valid development of the process, imposing its extinction without judgment on the merits (art. 267, IV of the CPC) and the consequent possibility of the author filing the action again (art. 268 of the CPC), if he/she gathers the necessary elements for such initiative."

This is an important jurisprudential guideline that eliminates the rigidity of res judicata in cases where the denial of a social security claim is due to a lack of effective evidence. The ruling also recognizes that a new lawsuit may be filed **based on new evidence,** without this constituting bis in idem or violating res judicata.

Topic 629 applies to multiple situations in the social security field, such as the presentation of amended PPPs in labor lawsuits, new rural documents, unpublished expert reports or new medical elements.

6. APPLIED JURISPRUDENCE

The case law of the Federal Regional Courts has adopted the understanding of the flexibility of res judicata based on Theme 629. Clear examples of this are:

> SOCIAL SECURITY LAW. APPEAL. RECOGNITION OF SPECIAL TIME. RES JUDICATA. FLEXIBILITY IN SOCIAL SECURITY MATTERS. NEW EVIDENCE. CANCELLATION OF THE SENTENCE. APPEAL GRANTED. I. CASE UNDER EXAMINATION 1.
> Appeal filed by the author against a judgment that dismissed the case without resolving the merits regarding the request for recognition of the specialty of periods worked (12/12/1998 to 31/12/2003 and

01/01/2004 to 04/28/2008) at Companhia Siderúrgica Nacional, by res judicata, and dismissed the request for conversion of retirement based on length of contribution to special retirement. The appellant claims the existence of new evidence obtained through rectification of the PPP in a labor claim and requests the annulment of the judgment so that the merits of the claim can be analyzed. II. ISSUE UNDER DISCUSSION 2. There are two issues under discussion: (i) to define whether the res judicata prevents the re-discussion of the request for recognition of the specialty of the periods worked; and (ii) to establish whether the rectification of the PPP constitutes new evidence capable of justifying the departure from the res judicata and the re-analysis of the r
REASONS FOR DECISION 3. The decision that dismisses the request for recognition of special time due to insufficient evidence is not res judicata, which allows the interested party the possibility of filing a new lawsuit, provided it is based on a new set of evidence. 4. The recognition of the peculiarity of social security demands, according to the case law of the STJ, demands a hermeneutic interpretation that prioritizes the realization of fundamental rights to social security, not allowing procedural rules to impede the assessment of the
right to social security benefits. IV. DEVICE AND THESIS 5.
Appeal granted. Judgment annulled. Judgment thesis: 1. Res judicata in social security matters allows for flexibility, so that the presentation of new evidence may justify the removal of its effects, based on the STJ thesis established in Theme 629, which considers the lack of effective evidentiary content in the initial claim as a lack of prerequisite for a judgment on the merits, allowing a new action if supported by additional evidentiary elements. Relevant provisions cited: CPC, arts. 337, §§ 1º, 2º and 4º, and 485, V; CF/1988, art. 194, sole paragraph, II. Relevant case law cited: STJ, REsp 1,352,721, Rel. Min. Napoleão Nunes Maia Filho, Special Court, DJe 04/28/2016; STJ, Theme 629; TRF -1, AC 00223000920184019199, Rel. Federal Des. Carlos Augusto Pires Brandão, j. 11/28/2018. DECISION: Having seen and reported these proceedings in which the above-mentioned parties are involved, the Egregious 10th Specialized Panel of the Regional Federal Court of the 2nd Region decided, unanimously, TO GRANT THE PLAINTIFF'S APPEAL to NULLIFY THE SENTENCE appealed and remit the proceedings to the Court of Origin for continuation of the case with the analysis of the merits of the request, in accordance with the report, votes and judgment notes, which are an integral part of this judgment. (TRF2, Civil Appeal, 00202
82.2018.4.02.5104, Rapporteur GUSTAVO ARRUDA MACEDO 10th SPECIALIZED
PANEL MACEDO, tried on , Relative of the Accord - GUSTAVO ARRUDA
02/25/2025, E-DJ 02/27/2025 17:15:22)

SOCIAL SECURITY. ORDINARY ACTION.
RETIREMENT RIGHT DUE TO CONTRIBUTION TIME.
RECOGNITION OF RURAL TIME. RES JUDICATA.
FLEXIBILITY. TESTIMONIAL AND DOCUMENTARY EVIDENCE.
APPEAL DISMISSED. I. CASE UNDER EXAMINATION 1. Ordinary action in which the plaintiff seeks the granting of the retirement benefit based on length of contribution, as of the date of the initial administrative request (April 9, 2012), with recognition of time of rural service and periods worked under special conditions. The INSS (National Institute of Social Security) denied the previous requests by not recognizing any period or time worked in rural areas as special, and the plaintiff filed a new lawsuit, repeating the requests previously made and recognizing rural work between January 29, 1970, and December 15, 1985. II. ISSUE UNDER DISCUSSION 2. There are two issues under discussion: (i) to determine whether there is res judicata that prevents the

reexamination of the request for recognition of rural time for granting retirement; (ii) establishing whether the documentation and witness statements presented by the plaintiff constitute sufficient evidence to recognize the period as rural service time. III. REASONS FOR DECISION 3. Recognition of res judicata requires the identity of parties, cause of action, and requests. However, in social security matters, case law makes res judicata more flexible, allowing a new analysis when the previous denial was due to insufficient evidence. In this case, the insufficient evidence in the previous action justifies a new judicial review, according to Topic 629 of the Superior Court of Justice. 4. Granting retirement based on contribution time requires proof of rural work through the initial provision of material evidence. Exclusively testimonial evidence is prohibited, except in exceptional cases. The documentation presented by the plaintiff (statements and records) is considered the initial provision of sufficient material evidence, supplemented by witness statements confirming the exercise of rural activity between January 29, 1974, and December 15, 1985. 5. The INSS acknowledges the existence of evidence of plaintiff's rural work, as per the defense and administrative records. Plaintiff's self-declaration, dated 1982, also reinforces the thesis of rural work, corroborated by the witnesses. 6. Granting of benefit NB 42/186.193.084-1, requested on 03/21/2018 (DER), with a contribution period of 42 years and 6 days. IV. DEVICE 7. Appeal dismissed. DECISION: Having seen and reported these proceedings, in which the above-mentioned parties are parties, the Honorable 9A. Specialized Panel of the Regional Federal Court of the 2nd Region unanimously decided to hear and DENY the INSS's appeal, in accordance with the report, votes, and judgment notes, which are an integral part of this judgment. (TRF2, Civil Appeal, 5025040-64.2022.4.02.5001, Rapporteur GUILHERME BOLLORINI PEREIRA 9th SPECIALIZED PANEL Rapporteur of the Judgment - GUILHERME BOLLORINI PEREIRA, decided on 11/25/2024, E-DJ 11/26/2024 1:45:51 PM)

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CIVIL AND SOCIAL SECURITY PROCEDURE. SOCIAL SECURITY PROCEDURE. FLEXIBILIZATION OF RES JUDICATA. EXISTENCE OF MATERIAL EVIDENCE SUITABLE TO PROVE THE EXERCISE OF RURAL ACTIVITY. NO OCCURENCE OF OFFENSE TO THE RES JUDICATA. APPEAL GRANTED. SENTENCE NULLIFIED. (TRF 3rd Region, 6th RECOURSE DIVISION OF SÃO PAULO, 16 - UNNAMED APPEAL - 0000710-59.2019.4.03.6329, Rapporteur FEDERAL JUDGE CIRO BRANDANI FONSECA, decided on 07/08/2020, e-DJF3 Judicial DATE: 08/20/2020)

Such judgments demonstrate that, **if there is a new set of evidence,** the issue can be re-examined without violating the res judicata, as long as the criteria of pertinence, relevance and veracity of the new evidence presented are respected.

7. FINAL CONSIDERATIONS

Res judicata represents an important instrument of legal certainty, but it should not be understood as an absolute dogma in the social security field. When the fundamental right to social security, human dignity, and continued social protection are at stake, formal rigidity must give way to substantive justice.

Contemporary doctrine, combined with the consolidated case law of the Superior Court of Justice **(STJ) in Topic 629,** has made **social security protection more effective** without violating the legal framework of res judicata. The theory of res judicata *secundum eventum probationis* allows for the reexamination of issues previously founded on a lack of evidence but now presented in full.

It is concluded that the flexibility of res judicata, under the conditions outlined here, is not only legally possible but also **ethically and constitutionally necessary.**

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